Trencor, Inc. *and* United Steelworkers of America AFL–CIO–CLC. Case 16–CA–17725

February 26, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS COHEN AND FOX

Upon a charge filed on November 30, 1995, the General Counsel of the National Labor Relations Board issued a complaint on December 12, 1995, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to furnish necessary and relevant information following the Union's certification in Case 16–RC–9800. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and asserting an affirmative defense.

On January 17, 1996, the General Counsel filed a Motion for Summary Judgment. On January 19, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On February 2, 1996, the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer and response the Respondent admits its refusal to bargain and to furnish information, but attacks the validity of the certification on the basis of its objections to conduct alleged to have affected the results of the election.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding.[1]

We also find that there are no factual issues requiring a hearing with respect to the Union's request for information. The Union requested the following information from the Respondent:

> (1) A list showing the names of all bargaining unit employees, their department, their job classification, their date of hire, and their current rate of pay.
>
> (2) Rates of pay for all job classifications including trainee rates, if any; the rate progression schedule, if any; job evaluation plans, if any; incentive plans, if any; and practices with respect to overtime pay, report-in pay, call-in pay, and shift differentials.
>
> (3) A list of any and all fringe benefits such as paid vacation, paid holidays, break time, funeral leave, military leave, jury and witness pay, and all other employee benefits in effect.
>
> (4) A copy of any insurance plan, pension plan, and any other employee benefit plan or program in effect.
>
> (5) A copy of any company rules that employees are required to follow including any predetermined disciplinary penalties for their violation.

The Respondent's answer admits that the Respondent refused to provide this information to the Union. Further, although the Respondent's answer effectively denies that the information requested is necessary and relevant to the Union's duties as the exclusive bargaining representative of the unit employees, it is well established that such information is presumptively relevant and must be furnished on request. See, e.g., *Masonic Hall*, 261 NLRB 436 (1982); and *Mobay Chemical Corp.*, 233 NLRB 109 (1977).

Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Texas corporation with an office and place of business in Grapevine, Texas, has been engaged in the manufacture of heavy construction equipment. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations, made

[1] See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). The Respondent's answer neither admits nor denies the complaint's allegations regarding the Union's status as a labor organization and the appropriateness of the unit. Thus, under Sec. 102.20 of the Board's Rules those allegations are deemed to be admitted. See, e.g., *View Heights Convalescent Hospital*, 255 NLRB 76 (1981). Moreover, the Respondent effectively stipulated to the Union's status as a labor organization and to the appropriateness of the unit by entering into a stipulated election agreement in the representation proceeding. Thus, the Respondent is precluded from litigating those issues in the instant proceeding. See *Biewer Wisconsin Sawmill*, 306 NLRB 732 (1992). Accordingly, we find that no issue warranting a hearing is raised with respect to those allegations.

purchases of a value exceeding $50,000 directly from outside the State of Texas. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held August 3, 1995, the Union was certified on October 25, 1995, as the collective-bargaining representative of the employees in the following appropriate unit:

> INCLUDED: All production and maintenance employees employed by the Employer at its facility in Grapevine, Texas.
>
> EXCLUDED: All office clerical employees, sales persons, field service technicians, professional employees, leadmen, supervisors and guards as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

Since November 9, 1995, the Union has requested the Respondent to bargain and to furnish necessary and relevant information, and, since November 14, 1995, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after November 14, 1995, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested necessary and relevant information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Trencor, Inc., Grapevine, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Steelworkers of America, AFL–CIO–CLC as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> INCLUDED: All production and maintenance employees employed by the Employer at its facility in Grapevine, Texas.
>
> EXCLUDED: All office clerical employees, sales persons, field service technicians, professional employees, leadmen, supervisors and guards as defined in the Act.

(b) Furnish the Union information that it requested on November 9, 1995.

(c) Post at its facility in Grapevine, Texas, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 16 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. February 26, 1996

William B. Gould IV, Chairman

Charles I. Cohen, Member

Sarah M. Fox, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with United Steelworkers of America, AFL–CIO–CLC as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

INCLUDED: All production and maintenance employees employed by us at our facility in Grapevine, Texas.

EXCLUDED: All office clerical employees, sales persons, field service technicians, professional employees, leadmen, supervisors as defined in the Act.

WE WILL furnish the Union the information that it requested on November 9, 1995.

TRENCOR, INC.